

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6216

ORIGINAL

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA and
CHARLES E. JORDAN, JR., Revenue
Agent, Internal Revenue Service,

Petitioners-Appellees,

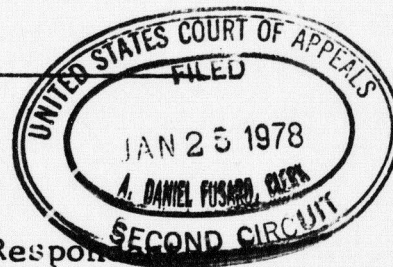
-against-

WILLIAM J. WERNER,

Respondent-Appellant.

On Appeal from the United States District
Court for the Southern District of New York

APPENDIX



BANDLER & KASS
Attorneys for Respondent-
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Southern District of New
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Appellees
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

A-1

DATE

PROCEEDINGS

1-8-77 SCHUMBERGER TECHNOLOGY CORP. et al-v- USA. ---Filed affidt. affidavit
cause order, for order pursuant to rule 45(d) compelling parties
to comply fully with the subpoena duces tecum served upon Michael
F. Zlotoff before this court on 1-3-77 at 2P.M. in Rm 506. Edalstein.
1-9-77 SCHUMBERGER TECHNOLOGY CORP. et al-v- USA ---Filed Govt's memo
of law in support.
1-9-77 SCHUMBERGER TECHNOLOGY CORP. et al-v- USA ---Filed order that
the documents set out in subpoena duces tecum be preserved & held
in safekeeping without being disposed of pending further order of the
court. Edalstein, J.
1-11-77 SCHUMBERGER TECHNOLOGY CORP. et al-v-USA---Filed stip & order that
def. file & serve papers in response to the aforesaid papers shall
extend from 1-17-77 to 2 including 4-8-77. Edalstein Ch. J.
1-11-77 SCHUMBERGER TECHNOLOGY CORP. et al-v- USA---Filed letter to Judge
Edalstein from Daniel T. Kolb--Re: Approval of stipulation.
Mar. 13-77 U.S.A. et-ano -V- WILLIAM WERNER-- Filed Govt's. petition and show
cause order to compel respondent to comply fully with I.R.S.
summons.-- Ret. 3/15/77 at 10:30 A.M. room 506.-- Bryan, J.
Mar. 13-77 U.S.A. et-ano -V- WILLIAM WERNER-- Filed Govt's. Memorandum of
Law in support of show cause order to enforce I.R.S. summons.
Mar. 14-77 U.S.A. et-ano -V- WILLIAM WERNER-- Filed response of William
J. Werner to petition for enforcement of I.R.S. Summons.(Affdvt.
John Ferland attached.).
Mar. 14-77 U.S.A. et-ano -V- WILLIAM WERNER-- Filed Memorandum of Law on behalf
of respondent in opposition to petition to enforce I.R.S. Summons.
Mar. 14-77 DANIEL SUPNICK OF IRS -V- LAI MING CHONG, etc.--- Filed govts' petiti
& show cause order requiring resp. to appear in person in room 506
at the USCH, Foley square, New York 10007 at 10:30 A.M. on March-
29, 1977. Frankel, J. Filed govts' memo in support.
Mar. 14-77 JOHN BRICE CICILIO of IRS -V- MANNY RESKAKIS---Filed govts' petition
& show cause order requiring resp. to appear in person in room 506
at USCH, Foley Square, New York 10007 at 10:30 A.M. on March 29-77
Wyatt, J. Filed govts' memo in support.
Mar. 15-77 USA -V- WILLIAM WERNER---Filed notice of appearance for deft. (Stephen
Silverberg c/o Sandler & Kiss
Mar. 15-77 IN RE: JOHN WYATT PROCEEDINGS---Filed affidt & order that US atty
shall make available for inspection & copying for USA in Rm.
506, USCH, Foley square, New York 10007 before the 12-26 Rec. CJ. Cooper, J.
Mar. 15-77 KENNETH BOCK MGR. OF CATTLEMANS BEEF CO.---Filed
affidvt & show cause order to compel resp. to fully testify & produce
records in IRS summons, ret. 3-19-77 at 10:30 A.M. Rm. 506. Wyatt, J.
Filed Govts memo in support.
Mar. 16-77 DANIEL SUPNICK of IRS -V- KENNETH BOCK MGR. OF CATTLEMANS BEEF CO.---
Filed govts petition & show cause order compelling resp. to testi
& produce records in US courthouse Rm 506 at 10:30 A.M. ret. 3-22-77
Frankel, J. Filed Govts. memo in support.
3-18-77 NATIONAL LABOR RELATIONS BOARD-V-GARDEN FASHIONS INC. et al ---Filed
order that respondents obey deposition subpoena to testify before
board at regional office on 3-18-77 at 9:30 AM. It is further or
dered that if respondents fail to appear before the board, they are to
appear before the the court on 3-22-77 at 10:30 AM Rm 506.
3-22-77 GARDEN FASHIONS INC. etc ---Filed certificate of service
John J. Lantieri on behalf of NLRB.

Docket Entries

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DATE	PROCEEDINGS	Date Ord. Judgment
11-10-77	USA -v- ARTHUR NASSER ETC.---Filed govts memo of law in support of petition to enforce IRS summons.	
11-10-77	USA -v- ARTHUR NASSER ETC.---Filed affdvt & order of US Attorney William Hihsher that the return date for the show cause order in this action is extended from 11-15-77 to 12-6-77. Weinfeld, J.	
11-10-77	USA -v- WILLIAM CABIN ETC.---Filed govts show cause order & petition requiring resp. to appear on 10-25-77 at 10:30A.M. room 506. Gagliardi	
11-10-77	USA -v- WILLIAM CABIN ETC.---Filed govts memo of law in support. ---Filed in court on 10-25-77.	
11-10-77	USA -v- WILLIAM CABIN ETC.---Filed order that the motion of taxpayer Michael R. Diem is granted,--- Further ordered that parties are to appear on 11-29-77 at 10:30 A.M. room 506. Gagliardi, J.	
11-10-77	USA -v- WILLIAM CABIN,---Filed letter addressed to the Hon. Lee P. Gagliardi dated 10-21-77 signed by Wm.G. Ballaine.	
11-10-77	USA -v- O'HENRY'S FILM WORKS, INC.ET AL.---Filed memo endorsed on notice of motion to reargue dated 10-18-77,--that the motion to reargue is therefore denied. Owen, J.	
11-10-77	USA -v- O'HENRY'S FILM WORKS, INC.ET AL,---Filed memo in support of motion for reargument.	
11-11-77	SEC -v- TOUCHE ROSS & CO.---Filed affdvt of acknowledgment of Misag Tab	
11-11-77	SEC -v- TOUCHE ROSS & CO.---Filed affdvt of acknowledgment of Misag Tab	
11-15-77	USA -v- FRANCISCO CRUZ---Filed memo endorsed on show cause order dated 1 Govt. appeared, order is to be submitted. So ordered Carter, J.	
11-15-77	USA -v- LOEB, RHODES & CO., ETC.---Filed notice of dismissal of petition without prejudice. Carter, J.	
11-16-77	USA -v- LOEB RHODES & CO., ETC,---Filed notice of dismissal of petition without prejudice. Carter, J.	
11-16-77	USA -v- RONALD NERETIN as trustee in Bankruptcy for Lac.etc.---Filed order that resp. comply fully with IRS summons served on 5-5-77. Carter, J.	
11-17-77	USA -v- FRANCISCO CRUZ,---Filed order directing resp. to comply with IRS summons served on 1-21-77. Carter, J.	
11-18-77	USA -v- ALAN HALL ---Filed affdvt, petition to enforce IRS summons & show order requiring resp. to appear in rm.506 of the USCH on 11-22-77 at 1 Knapp, J.	
11-18-77	USA -v- ALAN HALL---Filed govts. memo of law.	
11-18-77	FAY MARSHALL, SEC. OF LABOR, -v- CREER INDUSTRIAL CORP. & WM. CREER INDIV.---Filed show cause order on application for enforcement SDT of USDL. Resp. to appear at 10:30 A.M. on 11-25-77 in rm 506. Cooper, J.	
11-18-77	FAY MARSHALL, SEC. OF LABOR, -v- ST MICHAELS HOME INC.,---Filed show cause order on application for enforcement SDT of USDL, Resp. to appear at 10:30 A.M. on 11-25-77 in rm.506. Cooper, J.	
11-18-77	USA ovo WILLIAM J. WERNER--Re; IRS Summons,---Filed memo that resp. is to comply with IRS summons. Cooper, J.	
11-18-77	USA -v- WILLIAM CABIN---Filed order & consent that resp. be hereby enjoined returning or permitting the return to taxpayer Michael R. Diem or doc required by IRS. Carter, J.	
11-18-77	USA -v- CITIBANK---Filed govts petition to enforce IRS summons & show cause requiring resp. to appear in rm 506 at USCH on 12-6-77 at 10:30A.M. Carter, J. ---Filed govts memo in support of petition to enforce IRS summons.	
11-18-77	USA -v- MORGAN GUARANTY TRUST CO.---Filed supplemental affdvt. of Alexander Dombroski.	
11-18-77	USA -v- MORGAN GUARANTY TRUST CO.---Filed petitioners' reply memo of law.	
11-17-77	USA -v- THEODORE SLUK---Filed true copy of USCA mandate affirming the order District Court. --Judgment entered, Clerk.	
	on 12-28-77 filed bill of cost in favor of appellant & docketed as judgment # 78,40	

Docket Entries

A-3

ALL GOVERNMENT AGENCIES

M

3-304

DATE	PROCEEDINGS	Date of Judgment
12-77	USA -v- ALAN HALL---Filed govts affdvt & order that resp comply fully with IRS summons by appearing at IRS at 120 Church Street, N.Y.C. on 12-19-77 at 10:A.M. Pollack, J.	
12-77	USA -v- BOLESLOVS MAIKOVSKIS,---Filed govts petition & show cause order compelling resp to comply with INS subpoena. Ret. 12-22-77 at 10:00 A.M. room 506 at USCH Foley Sq. N.Y.C. Carter, J.	
12-77	USA -v- BOLESLOVS MAIKOVSKIS,---Filed govts memo of law in support of petition to enforce INS subpoena.	
14-77	USA -v- CITIBANK,---Filed answer of respondent.	
14-77	USA -v- CITIBANK,---Filed order that resp. appear before special agent of IRS at 95 Church St. White Plains, N.Y. on 12-28-77 at 10:A.M. to give testimony of Rudolph Williams etc. Carter, J.	
15-77	NAT'L LABOR RELATIONS BOARD-v-GARDEN FASHIONS INC. ET AL---Filed notice to take deposition of Cheri-Alan Ltd.	
14-77	MORGAN GUARANTY TRUST CO.-v-ROGER & SANDRA KEECH---Filed original record on appeal in the above proceedinf has been certified & transmitted to USCA for second circuit 12-14-77. Carter, J.	
16-77	USA -v-BOLESLOVS MAIKOVSKIS---Filed affdvt & concent order & adjourning motion of Joseph J. Lombardo adjourning matter from 12-22-77 to 1-17-78. Carter, J.	
19-77	USA -v- IRVING MATATIA---Filed respondent's memo in opposition.	
21-77	USA -v- JOHN MCGINN ---Filed memo endorsed on show cause order dated 12-9-77.. Motion disposed of in accordance with the court's ruling following argument settle order on notice. Werker, J.	
21-77	USA -v- HENRY H. KATZ---Filed memo endorsed on show cause order dated 11-28-77.. Motion disposed of in accordance with the court's ruling following argument. Settle order on notice. Werker, J.	
21-77	USA -v- CLARA GROSSO ---Filed memo endorsed on show cause order dated 12-9-77.. Motion withdrawn. Werker, J.	
21-77	USA -v- WILLIAM J. WERNER---Filed respondent's notice of appeal of order signed by Judge Irving Ben Cooper dated 11-17-77. Mailed copy to AUSA.	
23-77	USA -v- IRVING MATATIA ---Filed supplimental affdvt of Mark D. Sirkin.	
29-77	USA -v- IRVING MATATIA ---Filed govts reply memo.	
2-29-77	USA -v- WILLIAM WERNER---Filed original record on appeal transmitted to USCA for the second circuit on 12-29-77.	
5-78	USA -v- William Werner---Filed stipulation designating certain documents to become part of therecord on appeal.	
5-78	USA -v- William Werner--- Filed transcript record of proceedings dated March 15, 1977	

1-5-78

R.J.

A TRUE COPY

RAYMOND F. BURGEARD, Clerk

By

Deputy Clerk

PETITIONERS-APPELLEES' ORDER TO SHOW CAUSE
FOR ENFORCEMENT OF INTERNAL REVENUE SERVICE
SUMMONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
CHARLES E. JORDAN, Jr., Revenue
Agent, Internal Revenue Service,

Petitioners,

- v -

WILLIAM WERNER,

Respondent.

: ORDER TO SHOW CAUSE

: M-18-304

-----X

Upon motion of the United States Attorney for
the Southern District of New York, the annexed petition
and the affidavit of Charles E. Jordan, Jr., Revenue
Agent, Internal Revenue Service,

IT IS HEREBY ORDERED that the above-named respondent
show cause before this Court in Room 506 of the United
States Courthouse, Foley Square, New York, New York,
on March 15, 1977, at 10:30 A.M., or as soon thereafter
as counsel can be heard, why said respondent should not
be compelled to comply fully with the summons issued
by the Internal Revenue Service, which summons was duly
issued and served on the respondent; and it is

FURTHER ORDERED that good and sufficient service
of a copy of this order and the annexed petition and affidavit
shall be made by personal service upon William Werner,
Esq., the respondent, an attorney representing John and

Attidavit of William L. Werner in Response A-19
Petitioners-Appellees' Order to Show Cause for
Enforcement of Internal Revenue Service Summons

A-5

Jeanine Ferrandi in connection with federal income tax matters for 1970, 1971 and 1972 which personal service shall be made either by the United States Marshal or by an authorized officer or agent of the District Director of the Internal Revenue Service, Manhattan District on or before March 11, 1977.

Dated: New York, New York

March 9, 1977.

15/
United States District Judge

PETITION FOR ENFORCEMENT OF INTERNAL
REVENUE SERVICE SUMMONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA and	:	
CHARLES E. JORDAN, Jr., Revenue	:	
Agent, Internal Revenue Service,	:	<u>PETITION</u>
Petitioners,	:	M-18-304
- v -		
WILLIAM WERNER,	:	
Respondent.	:	

-----X

The United States of America and Revenue Agent, Charles E. Jordan, Jr., of the Internal Revenue Service, by their attorney, ROBERT B. FISKE, Jr., United States Attorney for the Southern District of New York, state upon information and belief:

1. This is a proceeding brought under the authority of Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954, 26 U.S.C. §§ 7402(b) and 7604(a), to enforce judicially an Internal Revenue Service Summons.

2. The petitioner Charles E. Jordan, Jr., ("Jordan") is employed as a Revenue Agent in the office of the District Director of Internal Revenue, Manhattan District, with a post of duty at 120 Church Street, New York, New York, 10008.

3. The respondent William Werner has a place of business at 605 Third Avenue, Suite 1501, New York, New York, within the Southern District of New York.

Petition for Enforcement of Internal
Revenue Service Summons

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4. Petitioner Jordan is conducting an investigation for the purpose of determining the income tax liability of John and Jeanine Ferrandi, for the periods 1970, 1971 and 1972.

5. The respondent is an attorney of record of the above-mentioned taxpayers and as such is in possession or control of books, records and other papers or has knowledge relating to the I.R.S. investigation.

6. As part of the I.R.S. investigation, Revenue Agent Edward P. Hanley issued an I.R.S. summons, dated October 15, 1976, (the "summons") directing the respondent to appear before Revenue Agent Jordan on October 26, 1976, at 10:00 A.M., at 120 Church Street, New York, New York, to testify and to produce for examination books, records and other papers, more fully described in the summons. A copy of the summons was personally served on the respondent by handing him an attested copy on October 15, 1976. A copy of the summons, bearing proof of service is attached as Exhibit A to the affidavit of petitioner Jordan, submitted in support of this petition.

7. On October 26, 1976, the respondent failed to appear in response to the summons. The respondent's failure to comply with the summons continues to date.

8. It is the practice of this Court to proceed by Order to Show Cause in these matters.

9. The testimony and records or other data

sought by the summons may be relevant to the determination of respondent's client's income tax liability for 1970, 1971 and 1972 and to a determination of the existence of fraud in respondent's client's tax return for those years; the information sought is not presently in the possession of the Internal Revenue Service.

10. By reason of respondent's failure to comply with the summons, the petitioners have been hindered and delayed in the assessment of taxes.

11. No previous application has been made for the order or relief sought herein.

WHEREFORE, the petitioners, the United States of America and Charles E. Jordan, Jr., respectively request:

1. that this Court issue an order directing the respondent to show cause why the respondent should not be compelled to comply fully with the Internal Revenue Service summons duly issued and served upon respondent;

2. that this Court enter an order directing the respondent to obey the attached summons by ordering the appearance of the respondent to give testimony and to produce the books, records and other papers as is required and called for by the terms of the summons before a proper officer of the Internal Revenue Service, at such time and place as may hereafter be fixed by Revenue Agent Charles E. Jordan, Jr., or any other proper officer of the Internal Revenue Service;

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4. that the Court render such other and further relief as is just and proper. Dated: New York, New York

March 9, 1977

By:

WILLIAM J. KELLNER, Jr.
Assistant United States Attorney
Office & Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: 212-791-1975.

A-10

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

That the sources of deponent's information and the grounds of his belief are official records and files of the United States and conversations with appropriate United States Government officials.

(S)

Sworn to before me this

9 day of March, 1977.

NEW YORK
TOWN OF ALBANY
TOWN EXETER MARCH 29, 1977

AFFIDAVIT OF CHARLES E. JORDAN, JR. IN
SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA and :
CHARLES E. JORDAN, Jr., Revenue :
Agent, Internal Revenue Service, : AFFIDAVIT

Petitioners, :

- v - :

WILLIAM WERNER, :

Respondent. :

- - - - -x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, CHARLES E. JORDAN, Jr., being first duly sworn, depose and say:

1. I am employed as a Revenue Agent in the office of the District Director of Internal Revenue, Manhattan District with a post of duty at 120 Church Street, New York, New York. This Affidavit is in support of this application for an order to show cause and is based upon personal knowledge and the records of the Internal Revenue Service.

2. In my capacity as a Revenue Agent, I am conducting a civil investigation for the purpose of ascertaining the amount of the income tax liabilities of JOHN & JEANINE FERRANDI for the periods 1970, 1971 and 1972.

3. As a part of the above investigation an

Internal Revenue Service summons was issued (the "summons") directing the respondent, the attorney of record for the taxpayers, to appear before me on October 26, 1976, to testify and produce for examination the books, records and other papers described in the body of the summons; a copy of this summons is attached hereto as Exhibit A.

4. On October 15, 1976, I personally served the Internal Revenue Service summons above on the respondent by handing an attested copy of said summons to the respondent. The copy of the Summons attached hereto as Exhibit A contains a certificate of service, signed by me, indicating personal service.

5. The summons directed respondent to appear at the Internal Revenue Service, 120 Church Street, New York, New York, on October 26, 1976. The respondent failed to appear in response to the summons at the time and place set forth in the summons. The respondent's failure to comply with the summons continues to the date of this affidavit.

6. It is necessary to examine the books, records and other papers demanded by the summons and to take the testimony of the respondent because the information sought may be relevant to the I.R.S.'s determination of the amount of the income tax liabilities of John & Jeanine Ferrandi for the periods 1970, 1971 and 1972. The information sought is not presently within the Internal

Revenue Service's possession.

7. By reason of the foregoing default or disobedience of the respondent, the petitioners have been hindered and delayed in the assessment of taxes.

8. No previous application has been made for the order or relief sought herein.

9. At present, there is no outstanding or pending recommendations for a criminal prosecution either by the I.R.S. or the Department of Justice with respect to the investigation described herein.

WHEREFORE, petitioner requests the issuance of an order directing that the respondent show cause why the respondent should not be compelled to obey fully the Internal Revenue Service summons duly issued and served upon respondent, and such other relief as the Court may find just and proper.

LS/

CHARLES E. JORDAN, Jr.

Sworn to before me this

9 day of March, 1977.

RALPH L. LEE
Notary Public, State of New York
No. 41-2292833 Queens County
Term Expires March 30, 1977

EXHIBIT A
[Annexed to Affidavit of Charles E. Jordan, Jr.]

Summons

Form 2039
(Rev. 2-74)

Summons



Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

JOHN & JEANINE FERRANDI

Internal Revenue District of Manhattan

Period(s) 1970, 1971 and 1972

The Commissioner of Internal Revenue

To William Werner, Esq.

At 605 Third Avenue, Suite 1501, New York, NY

Greetings:

You are hereby summoned and required to appear before

Revenue Agent Charles Jordan, Jr.

an officer of the Internal Revenue Service, to give

testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

All cancelled checks in your possession or control for the years 1970, 1971 and 1972 that were drawn on the accounts in the name of Mr. John Ferrandi, numbers 0740-10690 and 0740-14704, in the Manufacturers Hanover Trust Company, 699 Morris Park Avenue, Bronx, New York.

Place and time for appearance:

at 120 Church Street, New York, New York 10008 4th Floor

on the 26th day of October, 19 76 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States

commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 15th day of October, 19 76

Original

Signature

Title

Form 2039 (Rev. 2-74)

Certificate of Service of Summons**Certificate of Service of Summons**

(Pursuant to Section 7603, Internal Revenue Code)



I certify that I served the summons shown
on the front of this form on:

Date

October 15 1976

Time

2:15 PM

**How
Summons
Was
Served**

☒ I handed an attested copy of the summons to
the person to whom it was directed,

☐ I left an attested copy of the summons with the
following person at the last and usual place of
abode of the person to whom it was directed

Signature

Charles E. Jordan

Title

Internal Revenue Agent

Sec. 7603**Service of Summons**

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

AFFIDAVIT OF WILLIAM J. WERNER IN RESPONSE
TO PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
CHARLES E. JORDAN, Jr., Revenue Agent,
Internal Revenue Service,

Petitioners,

v

WILLIAM J. WERNER,

Respondent.

:
:
: RESPONSE TO PETITION FOR
: ENFORCEMENT OF INTERNAL
: REVENUE SERVICE SUMMONS

: M-18-304

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

William J. Werner, being duly sworn deposes and says:

1. I am a member of the Bar of this Court and a member of the firm of Bandler & Kass.

2. I maintain my place of business at 605 Third Avenue, Suite 1501, New York, New York 10016.

3. I and my firm are attorneys for the taxpayers herein involved, JOHN and JEANINE FERRANDI.

4. I am the Respondent in this proceeding and make this affidavit in response to the Instant Petition to Enforce Internal Revenue Service Summons.

5. The taxpayers herein, JOHN and JEANNINE FERRANDI, were not my clients or clients of my firm during the years 1970, 1971 or 1972,

which are the years covered by the Internal Revenue Service Summons herein. Neither I nor any member or associate of any firm with which I was ever connected prepared any of the taxpayer's income tax returns for any of said years, nor acted as an accountant for the taxpayers.

6. The taxpayers herein became clients of my firm and myself only in March of 1975 at which time there was in process an active investigation of JOHN FERRANDI concerning possible criminal prosecution on income tax violations. Said investigation during that time resulted in a recommendation for criminal prosecution which was approved by the Chief of Intelligence of the Internal Revenue Service and referred to Regional Counsel of Internal Revenue Service. After several conferences, Regional Counsel advised me in December of 1975 that the case was being returned to Audit Division. The letter from Regional Counsel is annexed hereto as "Exhibit A". The letter begins:

"This is to inform you that after a review of the evidence presently available to the Government . . ."
(emphasis added)

I have asked for any evidence to be furnished showing the criminal prosecution has been closed and the summoned records would not be used in the criminal prosecution of the taxpayers. The Petitioner, Mr. Jordan, has refused to give me any such evidence. Absent same, I can only conclude the recommendation for criminal prosecution is still outstanding. I am therefore constrained to oppose the instant Summons

Affidavit of William J. Werner in Response
to Petition

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because it is apparently issued for an improper purpose and in bad faith and after a recommendation for criminal prosecution.

7. All books and records of the taxpayers' which I have in my possession were delivered to me in connection with the taxpayers' seeking legal advice on said criminal investigation, which upon information and belief has to date still continued despite inference to the contrary contained in Petitioners' Memorandum in Support of the instant Motion.

8. The Internal Revenue Service Summons herein also seeks my testimony on certain of the taxpayers' records in my custody. In other words, the Internal Revenue Service wants me, as an attorney, to disclose confidential communications between my client and myself which took place in connection with an active criminal investigation of my client. As to this request I strenuously assert the recognized attorney-client privilege which only my client, JOHN FERRANDI, can waive.

9. As to the documents of my clients which are sought by this Summons, said documents are subject to my clients' Fifth Amendment privileges against self-incrimination, which privilege I assert on his behalf by his instructions. In conjunction therewith, I assert his attorney-client privilege as to said records delivered to me as part of his discussion with me of the legal aspects of said investigation necessary for me to give him my professional advice.

10. The records sought by the instant Summons are the taxpayers'

Affidavit of William J. Werner in Response
to Petition

A-19

private papers and as such are subject to the taxpayers' Fourth Amendment rights against unreasonable search and seizure. Since these papers are in the Respondent's possession as taxpayers' attorney and were delivered and held by the Respondent for the purpose of giving the taxpayers legal advice, they are subject to attorney-client privilege which is hereby asserted.

11. The reasons supporting my opposition to this motion are fully set forth in the Memorandum of Law in Opposition to Order Enforcing Internal Revenue Service Summons submitted herewith and made a part hereof.

WHEREFORE, it is respectfully requested that Petitioners' Petition be denied in all respects.

WILLIAM J. WERNER

SWORN to before me this _____
day of March, 1977.

EXHIBIT A

A-20

[Annexed to Affidavit of William J. Werner]

Letter dated December 5, 1975 from the Internal
Revenue Service Regional Counsel to William J.
Werner

Address any reply to: 26 Federal Plaza, New York, N.Y. 10007

Department of the Treasury

Regional Counsel

Internal Revenue Service

North-Atlantic Region

Date: DEC 5 1975

In reply refer to:

CC:NY-CT-243-74

WFHalley



William J. Werner, Esq.
c/o Bandler and Kass, Esqs.
605 Third Avenue
New York, New York 10016

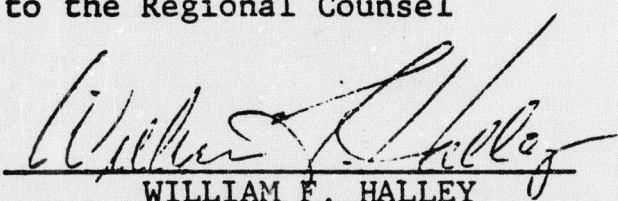
In re: John Ferrandi
112 Vernon Drive
Scarsdale, New York 10583

Dear Mr. Werner:

This is to inform you that after a review of the evidence presently available to the Government, a determination has been made that the above case, involving the income tax liabilities of John Ferrandi for the years 1970, 1971 and 1972 should be returned to the Audit Division of the Office of the District Director of Internal Revenue, Manhattan District, Church Street Station, New York, New York.

Very truly yours,

LEWIS J. ABRAHAMS
Acting Staff Assistant
to the Regional Counsel

By: 

WILLIAM F. HALLEY
Attorney

WFHalley:cb

AFFIDAVIT OF JOHN FERRANDI IN RESPONSE
TO PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA and
CHARLES E. JORDAN, JR.
Revenue Agent,
Internal Revenue Service,

:

:

M-18-304

:

Petitioners,

AFFIDAVIT

:

v

:

:

WILLIAM WERNER,

Respondent.

----- x

JOHN FERRANDI being duly sworn, deposes and says:

1. I am one of the taxpayers involved in the above-captioned proceeding and my records are sought by the Internal Revenue Service Summons herein.

2. The Respondent herein is my attorney at law who has rendered to me legal advice concerning the Internal Revenue Service investigation of my income tax returns for the years 1970, 1971 and 1972.

3. The records sought are of my personal checking transactions.

4. In light of the ongoing criminal investigation directed at me concerning the years 1970, 1971 and 1972, whether or not temporarily now in abeyance, and the substantial risk of criminal prosecution against

Affidavit of John Ferrandi in Response
to Petition

A-22

me on said years I hereby assert my Fifth Amendment privilege as to said records and hereby further confirm that I have directed my attorney to assert my Fifth Amendment privilege as to the records subject to said summons and as to each and every one of them.

5. I hereby assert my attorney-client privilege as to all communications (oral or written, including the records sought herein), which have taken place between myself and my attorney, William J. Werner, and direct him not to disclose any said communications in the instant proceeding. I further assert all rights granted to me whether under the Constitution of the United States, statutory law or common law.

SWORN to before me this

18 day of March 1977

Stephen Carl Silverberg

STEPHEN CARL SILVERBERG
Notary Public, State of New York
No. 52-4500244
Qualified in Suffolk County
Certificate filed in New York County
Commission Expires March 30, 1977

John Ferrandi
JOHN FERRANDI

TRANSCRIPT OF HEARING
[Pages A-23 through A-33]

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 RE: IRS SUMMONS FOR :
5 WILLIAM WERNER : M-18-304
6 -----X

7
8 March 15, 1977
9 1:30 p.m.

10 Before:

11 HON. IRVING BEN COOPER,

12 District Judge.

13 A P P E A R A N C E S:

14 ROBERT B. FISKE, JR., ESQ.,
15 United States Attorney for the
16 Southern District of New York
17 WILLIAM J. KELLEHER, ESQ.,
Assistant United States Attorney

18 STEVEN SILVERBERG, ESQ.,
19 Attorney for defendant
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21
22
23
24
25

RDrg

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THE COURT: Won't you please proceed.

MR. KELLEHER: Good afternoon, your Honor.

THE COURT: Good afternoon, counsel. What is the Government's position here?

MR. KELLEHER: Your Honor, briefly, by a little way of history, if you will permit me, this is a petition to enforce an Internal Revenue summons.

The respondent in this case is William Werner, who is an attorney and he represents the taxpayer John and Jeannine Ferrandi for the tax years 1970, 1971 and 1972.

In furtherance of the audit a subpoena was issued, an IRS summons rather, was issued on October 15, 1976, served on the same day.

THE COURT: Allow me to interrupt. I am sorry to do this.

(Discussion off the record.)

I am sorry, counsel. Please forgive me.

MR. KELLEHER: The summons was issued on October 15, 1976, and served on Mr. Werner on that day. The summons called for testimony and the production of cancelled checks of the taxpayer's for those tax years.

The respondent has failed to respond to that summons and that is why we bring this motion on by order to show cause in the enforcement proceedings.

RDrg

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The basic criteria called for in the Powell case for enforcement of a summons is that the summons have a legitimate purpose, that it be relevant to the purpose, that the information sought is not already in the Government's possession, and that the administrative steps have been followed.

THE COURT: Would you hold it against me more than you do already if I were to interrupt you to take a seat for a minutes? See if I have this down. If there is nothing to say, forget it. Don't waste my time. If there is something you want to ad', go ahead.

Here is what we get from the papers. Werner has been ordered to show cause why he should not be compelled to comply with the Commissioner of the Internal Revenue Service. This proceeding is brought under Title 26, U.S.C. Section 7402(b) and 7604(a) to enforce judicially an IRS summons.

Petitioner is Charles E. Jordan, Jr., Revenue Agent in the Office of the District Director of Internal Revenue, Manhattan District.

Respondent is William Werner, attorney of record for John and Jeannine Ferrandi, whose income tax liability for the years 1970-'72 is under investigation by the IRS.

As attorney of record for the Ferrandi's,

RDra

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respondent has in his possession or control books, records and other papers relating to the IRS investigation.

By an IRS summons dated October 15, 1976, respondent was directed to appear before Revenue Agent Jordan on October 26, 1976, and to produce for examination books, records and other papers relating to the IRS investigation.

Respondent has failed to comply with this summons. Consequently, the Government has brought on, by order to show cause dated March 9, 1977, this motion to compel compliance with the IRS summons referred to above.

The IRS is empowered under Title 26, U.S.C., Section 7602, to issue a summons for the examination of books and witnesses during the tax investigation. The standard for enforceability as enunciated in U.S. against Powell, 279 U.S. 48, 64, requires that the Government show "that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed."

Upon such a showing, the respondent then bears the burden of establishing that enforcement of the summons constitutes an abuse of the Court's process. U.S. against Powell supra at page 59. See also Donaldson against U.S.,

1 RDrq

2 400 U.S. 517 in 71.

3 Does that pretty much sum up the issues?

4 MR. KELLEHER: Yes, sir.

5 THE COURT: What do you want to add to it?

6 MR. KELLEHER: Well, counsel for the respondent
7 has submitted a memorandum of law characterizing different
8 constitutional protection issues, the Fourth Amendment,
9 the Fifth Amendment and the attorney-client privilege.
10 The Government contends that there is not much merit in the
11 Fourth and Fifth Amendment claims based on the recent Miller
12 and Fisher opinions of the Supreme Court of the United
13 States. We do, however, concede he has a claim although we
14 do not concede the correctness of the claim, on the
15 attorney-client privilege point.

16 What we would request is that the respondent be
17 directed to appear and be examined and assert whatever
18 claims he wishes at that time, Fourth, Fifth Amendments,
19 attorney-client privilege .

20 THE COURT: And counsel is allowed to be present
21 at that time and advise him.

22 MR. KELLEHER: Surely, your Honor. The Revenue
23 Agent was served with a subpoena to appear here today.
24 However, he is under certain restrictions by the Internal
25 Revenue Director and the Code of Federal Regulations about

1 testifying. I want to make your Honor aware that he has
2 been subpoenaed and he is in my office.
3

4 MR. SILVERBERG: Your Honor, there are several
5 points --

6 THE COURT: State them succinctly. Let's not
7 embellish them to the point where I have to go back to law
8 school. It's been a long time ago.

9 MR. SILVERBERG: The very basic issues that are
10 involved are these:

11 The first objection made by the respondent is
12 that the summons initially has been issued for an improper
13 purpose in that the tax returns of the taxpayers involved,
14 John and Jeannine Ferrandi, have been examined to an extent
15 to satisfy a revenue agent and a special agent to refer the
16 matter to regional counsel for criminal prosecution. That
17 much has been done already. That was done in 1974.

18 After conferences between Mr. Werner and regional
19 counsel, the case was sent back to audit. Why was it sent
20 back to audit? We can't say for sure, but the letter
21 referring the case back to audit says that based on the infor-
22 mation and documents now in the Government's possession,
23 they are sending it back. It doesn't say the case is closed;
24 it doesn't say no danger of prosecution. It says that we
25 want more information, in effect.

1 RDrq

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2 We are saying that recommendation for prosecution
3 under the Donaldson case bars the subsequent issuance and
4 enforcement of an IRS summons.

5 THE COURT: I have that point. Next.

6 MR. SILVERBERG: The next point is that Miller and
7 the Fisher cases do not, as the Government contends, diminish
8 our claims to constitutional privilege. Fisher, in very
9 exact detail, follows the entire history of the rights of
10 the Fourth and Fifth Amendments and the right to assert the
11 attorney-client privilege. It says if the papers are
12 privileged, if they are in the possession of an attorney to
13 render legal advice, they can not be compelled from the
14 possession of the attorney. That is clear in Fisher.

15 THE COURT: I have it.

16 MR. SILVERBERG: The next point is that the subpoena
17 is being issued pursuant to Rule 45 of the Federal Rules of
18 Civil Procedure, which is stated on the subpoena, and the
19 point of the subpoena is to get to the bottom of what the
20 status of the investigation is. Is it just a civil
21 investigation now? Is it merely a continuation of the
22 criminal investigation?

23 I point out in the memorandum the case of Lafco,
24 which says that an attorney from regional counsel cannot
25 have an IRS summons issued to gain more information after

1 RDrq

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2 it has been referred to him for criminal prosecution.

3 So the point of the subpoena is to get to the botto
4 of the facts for you, your Honor, to examine --

5 THE COURT: Which subpoena? Due this morning?

6 MR. SILVERBERG: Yes.

7 THE COURT: You have a right to ask the Court to
8 issue it and to go into it more thoroughly. But to do it
9 in the motion part, no sir. But it is alright. I have
10 your point. If I agree with you, I will issue the subpoena
11 myself or direct you to issue it.

12 MR. SILVERBERG: Very good, your Honor.

13 The final point I wish to make, which was not
14 covered in the memorandum --

15 THE COURT: Excuse me. Counsel for the Government,
16 and they are always very fair from my observation. In fact,
17 they sometimes go too far. But they have always been very
18 fair. Answer his point, when you come to it. Write him a
19 letter saying there is no need to subpoena anybody. Here is
20 what it amounts to, and give him the answer, if you concede
21 the wisdom of it.

22 Do you understand what I am saying?

23 MR. KELLEHER: Yes, your Honor, but --

24 THE COURT: Don't give me a comment now.

25 MR. SILVERBERG: I would like to submit to the

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Court for consideration that the respondent has a right, once he has raised a legitimate question as to the status of the question, to have the Court examine the agent and the records to --

THE COURT: For heaven's sake, if he is going to write you a letter saying what you are seeking to get, aren't you satisfied with that?

MR. SILVERBERG: It depends on what he says.

THE COURT: Of course. Isn't that obvious? You are just nettled because I didn't uphold your subpoena right now. You heard me do two things. First I said I would do it and then I said to the Government that you do it if you can, and that obviates everything. It gives you what you want.

What do you want him to do, give you a letter saying he ignores it? He either gives you something you are looking for or that's the end.

MR. SILVERBERG: I am sure the Court will consider whether the response is satisfactory. So I won't pursue the issue.

THE COURT: Were you in Court this morning? Do you think I would do otherwise?

MR. SILVERBERG: No, your Honor.

THE COURT: Go ahead.

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2 MR. SILVERBERG: The final point I wish to make,
3 and it is not covered in the memorandum, in the request to
4 Mr. Werner to produce the records, and the cancelled checks,
5 and our memorandum argues the private papers by the tax-
6 pavers: by the production of those checks that act is an
7 authentication that these are the checks being sought.
8 This is protected under Fisher and the prior cases.

9 THE COURT: I have the point.

10 MR. SILVERBERG: Thank you, your Honor.

11 THE COURT: You did a good job, so did you. I
12 understand it and it is a nice question.

13 If you can, would you let him have an answer one
14 way or the other. If you are not going to agree that that
15 is the state of affairs, why then tell him so and then I
16 will take that under consideration because you are sending
17 me a copy of it.

18 MR. KELLEHER: Fine, your Honor.

19 THE COURT: You understand what I am trying to
20 say. He says I want a subpoena and I want it returnable
21 right now and I want to ask the guy questions so that the
22 Judge can learn, etc. I say that is not the way to do it.
23 I will do it if I find it necessary. I will get you to
24 subpoena him before me or I will direct that he appear.

25 There is another alternative; that is, your writing

1 rdrq

2 a letter to him and saying that what he seeks to accomplish
3 you concede so or that you can't concede it. That is the
4 end of that. Do you have the point?

5 MR. KELLEHER: Yes.

6 THE COURT: What do you want to add? Don't spoil
7 it. You are doing well. Is it vital?

8 MR. SILVERBERG: Your Honor, I just wanted to --

9 THE COURT: I am three-quarters of a century old.
10 It is ten minutes to two. What does your sense say to you?
11 Do you bother the Judge with something not important?

12 MR. SILVERBERG: I have a feeling it can wait for
13 a subsequent occasion.

14 THE COURT: That's all right.

15 MR. SILVERBERG: Thank you, your Honor.

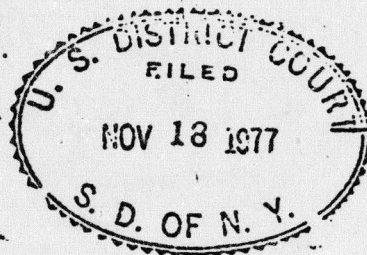
16 MR. KELLEHER: Thank you, your Honor.

17 ooo

MEMORANDUM AND ORDER OF JUDGE COOPER

#

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA and
CHARLES E. JORDAN, JR., REVENUE
AGENT, INTERNAL REVENUE SERVICE,

Petitioners,

M-18-304

-against-

MEMORANDUM

WILLIAM J. WERNER,

(IBC)

Respondent.

IRVING BEN COOPER, D. J.

The Government has moved by an Order to Show Cause why the Respondent, William Werner, Esquire, should not be compelled to comply fully with a summons issued by the Internal Revenue Service.¹ For the reasons appearing below, we hold that the position respondent has put forward is inadequate as a matter of law. Accordingly, he is ordered to comply with the summons.

A brief summary of the facts, as disclosed by the papers before us, might prove helpful. William Werner, Esquire, the respondent, is the attorney of record for John and Jeanine

1. We regret that an office error prevented an earlier disposition.

MICROFILM

NOV 18 1977

Ferrandi ("the taxpayers") and, as such, has in his possession books, records and other papers relating to the tax liability of the taxpayers for the years 1970, 1971 and 1972. Pursuant to Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954 (Title 26, Sections 7402(b) and 7604(a) of the U.S. Code), the Government has moved to enforce judicially the summons it duly served on respondent. He failed to appear in obedience to the summons.

In defense of his failure to comply with the summons, respondent argues that it was issued in bad faith and after recommendation for criminal prosecution of his clients, the taxpayers. Additionally, respondent contends that the records sought by the Internal Revenue Service are subject to the taxpayers' Fifth Amendment privilege. At the outset of this opinion, it is important to note that the taxpayers are not parties to the instant enforcement proceeding and, accordingly, the summons, if enforced, will not run against them personally.

We are satisfied from the affidavit submitted by the Government that the instant investigation serves a legitimate purpose; that the inquiry directed to respondent is relevant to such purpose; that the information sought is not already within the Service's possession and that all prior administrative steps required by the Internal Revenue Code have been followed. U.S.A. v. Powell, 379 U.S. 48, 57-58 (1964); Donaldson v. U.S.A., 400 U.S. 517 (1971).

The burden therefore shifts to the respondent to show cause why the summons is improper and should not be enforced. He cannot discharge that burden by an invocation of the tocsin that the investigation may result in criminal prosecution. Donaldson v. U.S.A., supra, at 532; Wild v. U.S.A., 362 F.2d 206, 209 (9th Cir. 1966).

Respondent goes even further: he asserts that a "recommendation for criminal prosecution is still outstanding" against the taxpayers. If this were factually so, it is clear that the summons would be outside the scope permitted by Section 7602 of the Internal Revenue Code and could not be enforced. Yet the respondent offers no facts to support his sweeping conclusion that a criminal investigation is afoot. Indeed, his "surmise" is fatally undermined by the affidavit of the Revenue Agent (Charles E. Jordan, Jr.) which states unequivocally that the investigation is exclusively civil in nature and that, at present, there is no outstanding or pending recommendation for a criminal prosecution (Affidavit, paragraphs 2, 9). Making bold assertions of a very general nature, unsupported by factual recital, is an easy undertaking, invariably unavailing. We are compelled (as judges have repeatedly done over decades) to cast them aside as hollow and unworthy.

The fact that the investigation may yield information of tax fraud leading to a recommendation to prosecute criminally is immaterial and quite beside the point at this phase of the

investigation. See U.S.A. v. Erdner, 422 F.2d 835, 836 (3rd Cir. 1970)(approving the use of a summons even where it is alleged that its purpose was to uncover crime, as long as no criminal prosecution has yet been instituted). U.S.A. v. Michigan Bell Tel. Co., 415 F.2d 1284, 1286 (6th Cir. 1969). Thus, we reject as specious respondent's arguments as to the possibility of a criminal investigation.

Respondent's next two points are quickly disposed of. The fact that respondent has possession of the records is crucial. Compelling him to turn over the records of his clients does not require the taxpayers to incriminate themselves. No element of coercion or moral compulsion is directed against the taxpayers. The relevant portion of the Fifth Amendment is clear:

No person. . . shall be compelled in any criminal case to be a witness against himself. [emphasis added]

The Supreme Court in Fisher v. U.S.A., 425 U.S. 391 at 397 stated it for all to see:

The taxpayer's privilege under this Amendment [Fifth] is not violated by enforcement of the summonses involved in these cases because enforcement against a taxpayer's lawyer would not "compel" the taxpayer to do anything -- and certainly would not compel him to be a "witness" against himself.

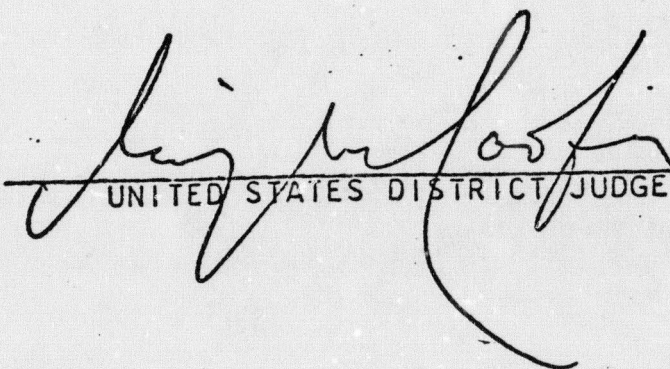
The result does not change even if the respondent were treated as an agent of the taxpayers; the privilege against self-incrimination is personal. Fisher v. U.S.A., supra; Couch v. U.S.A., 409 U.S. 322, 329 (1973); Hale v. Henkel, 201 U.S. 43, 69-70 (1906).

Finally, respondent urges that the privilege of attorney-client precludes his obedience to the summons. Clearly, confidential disclosures by a client to an attorney in order to obtain legal assistance are privileged. 8 J. Wigmore, Evidence § 2292 (McNaughton Ed. 1961) (hereinafter Wigmore). The policy advanced by the privilege is salutary: it encourages clients to make full disclosures to their attorneys. 8 Wigmore § 2291 and § 2306. Since the privilege results in withholding relevant information from the factfinder, it is applied only where necessary to achieve its purpose. In re Horowitz, 482 F.2d 72, 81-82. Here, the Government is seeking all cancelled checks in respondent's possession or control (see Summons attached to Government's papers) for the years 1970, 1971 and 1972 that were drawn on the accounts in the name of Mr. John Ferrandi (one of the two taxpayers). Clearly, the element of confidentiality is lacking. We take notice of the fact that cancelled checks necessarily must be seen by parties other than the taxpayer and his attorney. The respondent has failed to sustain all the essential elements of the attorney-client privilege.

Respondent is directed to produce the records sought by the Government and to do so no later than ten (10) days after service of a copy hereof.

SO ORDERED:

New York, N.Y.
November 17, 1977


UNITED STATES DISTRICT JUDGE

RESPONDENT-APPELLANT'S ORDER TO SHOW CAUSE
WITH STAY FOR RULE 60(b) RELIEF (UNSIGNED)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA and	:
CHARLES E. JORDAN, JR., Revenue	:
Agent, Internal Revenue Service,	:
	M-18-304(IBC)
Petitioners,	:
-against-	:
WILLIAM J. WERNER,	:
	<u>ORDER TO SHOW</u> <u>CAUSE WITH STAY</u>
Respondent.	:
-----X	

Upon motion of Bandler & Kass, Esqs., attorneys for Respondent, William J. Werner, and upon the annexed affidavit of Richard L. Gold,

IT IS HEREBY ORDERED, that the above-named Petitioners show cause before this Court in Room of the United States Courthouse, Foley Square, New York, New York, on , 197., at A.M., or as soon thereafter as counsel can be heard, why an order should not issue pursuant to F.R. Civ. P. 60(b), relieving the Respondent, William J. Werner, from the Memorandum and Order of the Honorable Judge Irving Ben Cooper, dated November 17, 1977, and filed in the United States District Court for the Southern District of New York on November 18, 1977, or in the alternative, why an order should not issue staying the enforcement of the summons issued by the Internal Revenue

Respondent-Appellant's Order to Show Cause
with Stay for Rule 60(b) Relief (Unsigned)

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Service against the Respondent, William J. Werner, and permitting the Respondent, William J. Werner, to retain possession of the documents summoned, pending the hearing and determination of the Respondent's appeal from the aforementioned Memorandum and Order of the Honorable Judge Irving Ben Cooper, and entry of a judgment thereon; and it is

FURTHER ORDERED, that sufficient cause appearing therefore, service of a copy of this order with the affidavit upon which it is granted, upon the Petitioners' attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York (Of counsel: William J. Kelleher, Jr.) on or before the day of , 197 , shall be good and sufficient, and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings be stayed for enforcement of the Memorandum and Order of the Honorable Judge Irving Ben Cooper, described above, heretofore entered herein, on the part of the Petitioners and their representatives.

Dated: New York, New York
December , 1977.

Honorable Irving Ben Cooper,
United States District Judge

AFFIDAVIT OF RICHARD L. GOLD IN SUPPORT
OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA and :
CHARLES E. JORDAN, JR., Revenue Agent, :
Internal Revenue Service, :

Petitioners, : M-18-304(IBC)

-against- :

WILLIAM J. WERNER, :

AFFIDAVIT

Respondent. :

-----X
STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

RICHARD L. GOLD, being duly sworn, deposes and says:

1. I am a member of the Bars of the State of New York and of this Court and am an associate with the firm of Bandler & Kass, Esqs., attorneys for Respondent, William J. Werner, in the above-captioned matter. I make this affidavit in support of a motion, by way of order to show cause, to relieve the Respondent from the Memorandum and Order of the Honorable Judge Irving Ben Cooper, dated November 17, 1977, and filed in the United States District Court for the Southern District of New York on November 18, 1977; or, in the alternative, for an order staying the enforcement of the summons issued by the Internal Revenue

Affidavit of Richard L. Gold in Support
of Order to Show Cause

A-43

Service against the Respondent and permitting the Respondent to retain possession of the documents summoned, pending the hearing and determination of the Respondent's appeal from the aforementioned Memorandum and Order of the Honorable Judge Irving Ben Cooper, and entry of a judgment thereon.

2. Respondent is the attorney of record for John and Jeanine Ferrandi ("the Taxpayers") and has in his possession certain records of the Taxpayers. The Petitioners have summoned the Respondent to produce cancelled checks drawn on certain accounts in the name of Mr. John Ferrandi. The Respondent failed to appear in obedience to the summons and the Petitioners brought the instant proceeding to compel compliance therewith.

3. The Respondent's position is that the summons, the enforcement of which is sought herein, was issued in bad faith and should not be enforced. The Respondent further contends that summons, even if issued in good faith and before the making of a recommendation that the Taxpayers be prosecuted criminally, is unenforceable because its enforcement would violate the Taxpayers' Fifth Amendment rights.

4. The matter came on for a hearing before the Honorable Judge Irving Ben Cooper of this Court on March 15, 1977. Prior to the hearing, the Petitioner, Charles E. Jordan, Jr., was served with a Civil Subpoena by the Respondent's attorneys. A copy of this Civil

Affidavit of Richard L. Gold in Support
of Order to Show Cause

A-44

Subpoena is annexed hereto as Exhibit A. The Civil Subpoena sought the production of documents relative to the criminal investigation of the Taxpayers' income tax liabilities by the Internal Revenue Service. At the hearing, Judge Cooper, before enforcing the Civil Subpoena, asked William J. Kelleher, Jr., Assistant United States Attorney representing the Petitioners, to send Respondent's attorneys a letter indicating the status of the criminal investigation of the Taxpayers by the Internal Revenue Service.* A copy of Mr. Kelleher's letter, dated April 7, 1977, is annexed hereto as Exhibit B. Respondent's attorneys responded to Mr. Kelleher's letter in a letter dated April 14, 1977, a copy of which is annexed hereto as Exhibit C. It has been and continues to be the Respondent's contention that an examination of the Government's files is essential to the Court's determination with respect to the Government's allegation that the criminal investigation of the Taxpayers' income tax liability is closed.

5. Pending the determination of the Petitioners' application herein, the Internal Revenue Service served the Taxpayers with a Notice of Deficiency for the 1972 tax year. The Taxpayers have petitioned in the United States Tax Court for a review of this determination. Copies of the Petition and the Notice of Deficiency are annexed hereto as

* Your affiant did not appear on behalf of the Respondent at the aforementioned hearing. Your affiant has not had an opportunity to review a transcript of that hearing, since it is not presently available. This allegation is made on information supplied to your affiant by Stephen C. Silverberg, Esq., who did appear on behalf of the Respondent on that occasion.

Affidavit of Richard L. Gold in Support
of Order to Show Cause

A-45

as Exhibit D.

6. Thereafter, Judge Cooper issued his Memorandum and Order in response to which this application is made. The Order directs the Respondent to comply with the summons served upon him within ten (10) days after service of a copy thereof. A copy thereof was personally served upon the Respondent on Wednesday, December 14, 1977.

7. It is requested that based upon the arguments set forth in the Respondent's Memorandum in Support of this Motion for Rule 60(b) Relief, submitted herewith, the relief requested herein should be granted. It is further requested that, pending the hearing and determination of this motion and entry of an order thereon, this Court grant a stay of its Memorandum and Order and permit the Respondent to retain possession of those documents summoned. If a stay is not granted, the Respondent will be forced to turn over the summoned documents to the Petitioners and this application will be rendered moot. In this regard, the Respondent and the Taxpayers will be severely prejudiced if the requested stay is not granted. On the other hand, the Petitioners will suffer little, if any, prejudice if the requested stay is granted.

8. With respect to his application for the alternative relief of a stay of the aforementioned Memorandum and Order and permission to

* Since the Internal Revenue Service was able to compute in detail the Taxpayers' alleged deficiency, it is submitted that the documents summoned are not necessary to the Petitioners' investigation of the Taxpayers' income tax liability, at least with respect to the 1972 tax year.

Affidavit of Richard L. Gold in Support
of Order to Show Cause

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retain possession of those documents summoned pending the hearing and determination of the Respondent's appeal from the Memorandum and Order thereon and entry of a judgment thereon, the Respondent finds himself caught between Sylla and Charyodis. If he serves and files his Notice of Appeal, the Respondent will divest this Court of jurisdiction to hear and determine this motion. If he does not serve and file his Notice of Appeal, then this request is premature and this Court cannot grant the alternative relief. The Respondent has, therefore, served his Notice of Appeal (a copy of which, along with a copy of the affidavit of service by mail, is annexed hereto as Exhibit E), but has not filed the same in the Office of the Civil Clerk of the United States District Court for the Southern District of New York. Your Respondent will, however, file the Notice of Appeal upon the earliest reaching of either of the following two dates - (1) one day before the expiration of time for effecting a timely filing of the Notice of Appeal pursuant to F.R. App. P. 4(a), or (2) the date on which this Court denies the instant application for Rule 60(b) relief. Since the Notice of Appeal is effective only upon its being filed with the appropriate clerk, it is submitted that this Court is not divested of jurisdiction to hear and determine this motion by the mere service of the Notice of Appeal. However, if the Court is inclined to deny the instant application for Rule 60(b) relief, the Respondent will immediately file his Notice of

Affidavit of Richard L. Gold in Support
of Order to Show Cause

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Appeal, thus making this request for alternative relief timely.

9. As with the request for a stay pending the hearing and determination of this motion, the stay pending appeal is required to prevent rendering the appeal moot. If the Respondent is forced to comply with the summons, the enforcement of which has been granted in the Memorandum and Order of Judge Cooper, then the appeal will be an exercise in futility and the Respondent and the taxpayers will be severely prejudiced. Again, the Petitioners would suffer little, if any, prejudice if forced to await the outcome of the Respondent's appeal before enforcing their summons. The application for this stay is made in this Court pursuant to the provisions of F.R. App. P. 8(a).

10. Except as described above, the relief requested herein has not been sought from any court or judge thereof.

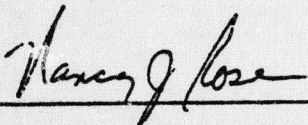
WHEREFORE, it is respectfully requested that this Court, pursuant to F.R. Civ. P. 60(b), relieve the Respondent, William J. Werner, from the Memorandum and Order of the Honorable Judge Irving Ben Cooper, dated November 17, 1977, and filed in the United States District Court for the Southern District of New York on November 18, 1977; and that this Court refuse to enforce the summons served upon the Respondent, William J. Werner; or, in the alternative, that this Court, upon permitting the Respondent to file his Notice of Appeal from the aforementioned Memorandum and Order of Judge Cooper, grant a stay of that

Affidavit of Richard L. Gold in Support
of Order to Show Cause

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Memorandum and Order and permit the Respondent, William J. Werner, to retain possession of the documents summoned pending appeal and entry of a judgment thereon. It is further requested that pending the hearing and determination of this motion and entry of an order thereon, that this Court stay the Memorandum and Order of Judge Cooper and permit the Respondent, William J. Werner, to retain possession of the documents summoned.

Sworn to before me this
21st day of December, 1977



NANCY J. ROSE
Notary Public, State of New York
No. 31-45-1617
Qualified in New York County
Commission Expires March 30, 1978

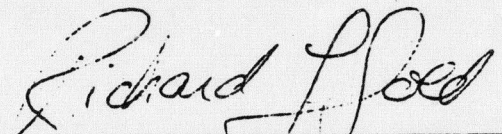

Richard L. Gold

EXHIBIT A
[Annexed to the Affidavit of Richard L. Gold]

Civil Subpoena to Charles E. Jordan, Jr.

CIVIL SUBPOENA

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

TO CHARLES E. JORDAN, JR.
Revenue Agent of the
Internal Revenue Service

CASE NO. M-18-304

JUDGE'S INITIALS _____

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Southern District of New York, at the courthouse, Foley Square in the City of New York, in said District, on the 15th day of March A.D. 19 77, at 10:30

o'clock A.M. of said day (and bring with you any and all documents, reports, memoranda, correspondence and communications in respect of the criminal liability of or recommendation for criminal prosecution of John or Jeanine Ferrandi in connection with Income Tax Returns or liabilities of said John or Jeanine Ferrandi for the year 1970, 1971 and 1972. This subpoena is being issued pursuant to Rule 45 of the Federal Rules of Civil Procedure.

then and there to testify on behalf of the Respondent (as a hostile witness) in a suit pending in said Court wherein the United States of America ~~is Plaintiff~~ and Charles E. Jordan, Jr. are Petitioners and William Werner is ~~Respondent~~ Respondent.

March 14, 19 77

Bandler & Kass, Esqs.
Attorney for Respondent

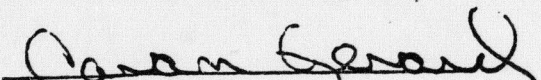
605 Third Ave., N.Y., N.Y.
Address

RAYMOND F. BURGHARDT, Clerk.

By M. C. Berran
M. C. BERRAN, Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at 605 Third Avenue, New York, N. Y.
at 11:00 a.m. on March 14, 1977 and on March 14, 1977
at 11:40 a.m. served it on the within named Charles E.
Jordon, Jr. by delivering a copy to him.


CARAN GERARD

Subscribed and sworn to
before me, a Notary Public
this 14th day of March, 1977.

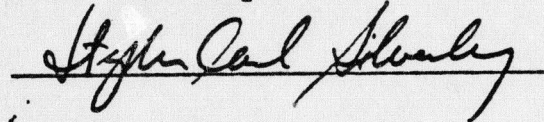


EXHIBIT B
[Annexed to the Affidavit of Richard L. Gold]

Letter of William J. Kelleher to William
Werner, dated April 7, 1977



ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

WJK:emw

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

April 7, 1977

William Werner, Esq.
Bandler & Kass
605 Third Avenue
New York, New York 10016

Re: United States of America v.
William Werner - M-18-304

Dear Mr. Werner:

As you will recall, the Honorable Irving Ben Cooper requested that the Government advise you by letter as to its position in this matter. This letter will supplement the Government's position as set out in paragraph number nine of the affidavit of Revenue Agent Charles E. Jordan, Jr.

The purpose of the issuance of the Internal Revenue Summons is to obtain the cancelled checks of taxpayers Mr. and Mrs. Ferrandi to assist Revenue Agent Jordan in determining the existence and extent of a deficiency of income taxes for tax years 1970, 1971 and 1972.

Prior to the issuance of the summons (October 15, 1976) a criminal investigation by the Intelligence Division had been commenced in June of 1974. This criminal investigation was subsequently closed on December 12, 1975. The criminal investigation was closed on that date by a



WJK:emw

William Werner, Esq.

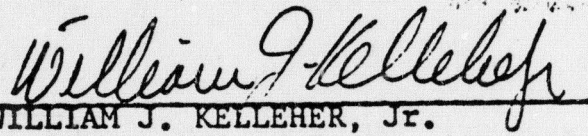
April 7, 1977
Page 2.

Criminal Action Memorandum submitted by Regional Counsel
who recommended that no criminal prosecution be made.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By:


WILLIAM J. KELLEHER, JR.
Assistant United States Attorney
Tel.: (212) 791-1975

cc: Honorable Irving Ben Cooper
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

EXHIBIT C

A-53

[Annexed to the Affidavit of Richard L. Gold]

Letter of Stephen C. Silverberg to William
J. Kelleher, Jr., dated April 14, 1977

LAW OFFICES

BANDLER & KASS

HARRY S. BANDLER (1873-1952)
WILLIAM C. SHERR
WILLIAM J. WERNER
DAVID FISHER
ROBERT SYLVOR
STEPHEN C. SILVERBERG
DON B. PANUSH
CARL J. MORELLI
RICHARD L. GOLD
COUNSEL
JULIUS KASS

305 THIRD AVENUE
NEW YORK, N.Y. 10016
TELEPHONE (212) 972-1100
CABLE ADDRESS: BANKASHER

April 14, 1977

Robert B. Fiske, Jr.
United States Attorney
One St. Andrews Plaza
New York, New York 10007

Attention: William J. Kelleher, Jr.
Assistant United States Attorney

Re: United States of America v.
William Werner
M-18-304

Dear Mr. Fiske:

We have read and studied your letter of April 7, 1977 which you advise supplements the Government's position as set out in paragraph number nine of the Affidavit of Revenue Agent Charles E. Jordan, Jr.. Not having seen Regional Counsel's Criminal Action Memorandum referred to in your letter, Respondent is left in the same position as before: It is Respondent's belief and reasonable concern that the case has been sent back to Audit for the purpose of gathering the missing evidence needed for Regional Counsel to go forward with its criminal prosecution of John Ferrandi.

We propose a simple and conclusive means of assuring Respondent and John Ferrandi that their fears are not substantial. A duly authorized attorney at Regional Counsel should grant John Ferrandi complete use and transactional immunity from prosecution on any violations of Federal income tax laws or regulations for the years 1970, 1971 and 1972. If, as your letter tries to convey, Regional Counsel has determined that there is not sufficient basis for prosecution of John Ferrandi, the immunity requested should be easily granted.

BANDLER & KASS

Robert B. Fiske, Jr.
United States Attorney
April 14, 1977
Page 2

You can understand that if such immunity as requested is not granted, John Ferrandi and Respondent have good and sufficient reason to be apprehensive of the good faith and proper purpose for the issuance of the Summons in question. In such case, Respondent must again assert his right to require the examination of Revenue Agent Jordan and his file on John Ferrandi to have the Court determine the true purpose for the issuance of the Summons in question.

Very truly yours,

BANDLER & KASS

SCS:fa

Stephen C. Silverberg

cc: Honorable Irving Ben Cooper
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

EXHIBIT D

A-55

[Annexed to the Affidavit of Richard L. Gold]

Petition of John Ferrandi and Jeannine Ferrandi
in United States Tax Court and Notice of De-
ficiency of Internal Revenue District Director to
John Ferrandi and Jeannine Ferrandi

(Page A-55 through Page A-62)

UNITED STATES TAX COURT

- - - - - x

JOHN FERRANDI and JEANNINE FERRANDI,

Petitioners,

.v.

DOCKET NO.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

- - - - - x

PETITION

The above-named Petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his Notice of Deficiency UA:R:90D dated May 9, 1977, and as the basis for their case allege as follows:

1. The Petitioners are individuals with legal residence now at 112 Vernon Drive, Scarsdale, New York 10583. The returns for the purposes here involved were filed with the Internal Revenue Service Center serving the District of Manhattan and located in New York City, New York.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the Petitioners on May 9, 1977, and was issued by the Office of the Internal Revenue Service at Manhattan, New York.

3. The deficiencies as determined by the Commissioner are for income taxes for the Calendar Year Ending December 31, 1972 in the amount of \$44,609.17. In addition, the Commissioner has proposed a penalty pursuant to Section 6653(a) of the Internal Revenue Code as against Petitioners in respect of the deficiency for the Calendar Year Ending December 31, 1969 in the amount of \$2,230.46. All the foregoing findings of deficiency for tax and penalty are in dispute.

4. The determination of taxes and penalty set forth in the said Notice of Deficiency are based upon the following errors:

(a) For the Calendar Years Ending December 31, 1972, the Commissioner erroneously determined that the Petitioners realized unreported taxable income from unexplained deposits in the amounts of \$86,117.90.

(b) For the Calendar Year 1972, the Commissioner erroneously determined that part of the underpayment of tax for those tax years was due to negligence or intentional disregard of the rules and regulations. Consequently, the Commissioner erroneously asserted the 5% addition to the tax for the year 1972 under Section 6653(a) of the Internal Revenue Code.

5. The facts upon which the Petitioners rely as the basis of their case are as follows:

(a) As to Item 4(a) herein, all said deposits were explained as not constituting receipt of any taxable income.

(b) As to Item 4(b) herein, no underpayment of tax

exists for any tax year in issue. If, however, this Court determines that any additional tax is due for any year in issue, Petitioners were not negligent and did not intentionally disregard any rules or regulations in the preparation of their returns for any tax year in issue. Accordingly, the 5% addition to tax is erroneously asserted.

WHEREFORE, the Petitioners pray that this Court may try this case and resolve the issues in favor of the Petitioners and give such other and further relief as in the premises the Court may deem fit and proper.

Dated: August 2, 1977

John Ferrandi
John Ferrandi

Jennine Ferrandi
Jennine Ferrandi
112 Vernon Drive
Scarsdale, New York 10583
(914) UN3-8801

Internal Revenue Service
District Director

Department of the Treasury

Date:

Tax Year Ended and Deficiency:
12/31/72 \$44,609.17
Negligence Addition
\$2,230.46

Mr. John Ferrandi and
Mrs. Jeannine Ferrandi
112 Vernon Drive
Scarsdale, New York 10583

Person to Contact: R. Armstrong
AU:R:90D
Contact Telephone Number:
212 264-3109

Dear Sir and Madam:

This letter is a NOTICE OF DEFICIENCY--as required by law--that we have determined the income tax deficiencies shown above. We regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early payment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

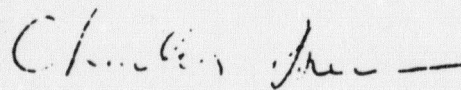
If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, we may withdraw any deficiencies and bill you until after the Tax Court has decided your case. You can obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address stated above.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Jerome C. Kertiz
~~Assistant District Director~~
Commissioner
By



District Director

Enclosure
Statement
Self-addressed
envelope

John Ferraro and Jeannine Ferraro

Statutory Notice Statement

The stated deficiency and addition to the tax are based on adjustments and explanations set forth in detail below.

It is determined that part of the underpayment of tax for the taxable year ended December 31, 1972 is due to negligence or intentional disregard of rules and regulations, therefore the 5% addition to the tax provided by section 6653(a) of the Internal Revenue Code of 1954 is asserted for that year.

Statutory Notice Statement - Waiver

Name and Address of Taxpayer(s)

John Ferrandi and Jeannine Ferrandi
112 Vernon Drive
Scarsdale, New York 10583

Kind of Tax	☐ Copy to Authorized Representative	
Income		
Taxable Year Ended	Deficiency (Increase in Tax and Penalties)	Negligence Addition
12/31/72	\$44,609.17	\$2,230.46

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Signature		Date
		Date
	By	Title
		Date

Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return the form in order to limit the actual amount and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (other than a refund of the tax) if you later determine you are so entitled. For purposes of the refund determination, if necessary, that you agree. Additional tax not extend the time provided by law for collection.

If you have filed a claim and the Internal Revenue Service or the court has determined that the deficiency is correct, you may not file a petition in the Tax Court.

Who Must Sign

If you filed jointly, both you and your spouse must sign. If the taxpayer is a corporation this waiver must be signed with the corporate name followed by the signatures and titles of the officers authorized to sign.

Your attorney or agent may sign this waiver provided the action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

It is recommended that you keep a copy of this form for your records.

U.S. GOVERNMENT PRINTING OFFICE: 1974

Form 4089 (Rev. 11-73)

Exhibit D (Continued)

A-61

5278 (Rev. June 1976)		Statement — Income Tax Changes		Return Form No. 1040	Indicate Page 1
Name(s) of Taxpayer(s) John Ferrandi and Jeannine Ferrandi		☒ Notice of Deficiency ☐ Other (specify) ☐ Settlement Computation			
		Tax Years Ended			
1. Adjustments to income		12/31/72			
a. Income — Other		\$ 86,117.90			
b.					
c.					
d.					
e.					
f.					
g.					
2. Total adjustments		\$ 86,117.90			
3a. ☒ Taxable income	☐ Adjusted gross income				
b. As shown in:					
☐ Preliminary letter dated _____ ☐ Notice of deficiency dated _____ ☒ Return as filed		26,688.96			
4. ☒ Taxable income as revised	☐ Adjusted gross income as revised	112,806.86			
5. Tax (Maximum Tax)		51,237.20			
6. Alternative tax if applicable (from page _____)					
7. Tax surcharge					
8. Corrected tax liability (lesser of line 5 or 6, plus line 7)		51,237.20			
9. Less credits (specify)	a.				
	b.				
	c.				
10. Balance (line 8 less amounts on lines 9a through 9c)		51,237.20			
11. Plus:	a. Tax from recomputing prior year investment credit				
	b. Self-employment tax	675.00			
	c.				
12. Total corrected income tax liability (line 10 plus amounts on lines 11a through 11c)		51,912.20			
13. Total tax shown on return XXXXXX		7,303.03			
14. Increase or XXXXXX in tax (difference between lines 12 and 13)		\$44,609.17			
15. Additions to the tax (listed below)					
Addition to the tax — Section 6653(a) 5%		\$2,230.46			

Explanation of Adjustments

12/31/72

(a) It is determined that you realized unreported taxable income during 1972 in the amount of \$86,117.90, as shown below.

Deposits in:

Manufacturers Hanover Trust Company A/C #074	0-10690	\$39,528.86
Manufacturers Hanover Trust Company A/C #074	0-14704	80,756.40
Paine Webber Jackson & Curtis Inc.		<u>47,419.24</u>
Total deposits		<u>\$167,704.50</u>

Less: Non-income deposits and items

(a) Transfers	\$36,000.00
(b) Dividend income reported	2,518.00
(c) Interest income reported	554.00
(d) Gross rental income	29,380.00
(e) Partnership withdrawals	<u>13,134.60</u>

Total non-income deposits and items

81,586.60

Adjustment

\$86,117.90

EXHIBIT E
[Annexed to the Affidavit of Richard L. Gold]

Respondent-Appellant's Notice of Appeal and
Affidavit of Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA AND
CHARLES E. JORDAN, JR., REVENUE AGENT,
INTERNAL REVENUE SERVICE,

M-18-304 (IBC)

PETITIONERS,

NOTICE OF APPEAL

-against-

WILLIAM J. WERNER,

RESPONDENT.

S I R S :

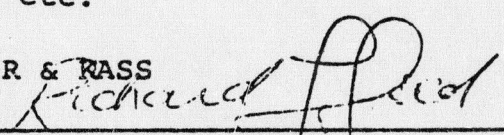
PLEASE TAKE NOTICE that the Respondent, William J. Werner, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order of Judge Irving Ben Cooper of the United States District Court for the Southern District of New York, dated November 17, 1977, filed on November 18, 1977 and ordering the Respondent, William J. Werner, to comply fully with a summons issued by the Internal Revenue Service, and from each and every part of that Memorandum and Order.

Yours, etc.

Dated: New York, N. Y.
December 20, 1977

To: Robert B. Fiske, Jr.
United States Attorney
Southern District of
New York
One St. Andrews Plaza
New York, N.Y. 10007
(Of Counsel:
William J. Kellerher, Jr.)

BANDLER & KASS

By: 
(An Associate of the Firm)
Attorneys for Respondent
William J. Werner
Office & P. O. Address
605 Third Ave.
New York, N.Y. 10016
(212) 972-1100

STATE OF NEW YORK, COUNTY OF NEW YORK

age and reside at

NANCY J. ROSE
NEW YORK, N.Y.

ss:

being sworn says: I am not a party to the action, am over 18 years

On December 20, 1977, I served a true copy of the annexed NOTICE OF APPEAL
in the following manner:Service
By Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Personal
Service

by delivering the same personally to the persons and at the addresses indicated below:

ROBERT B. FISKE, JR., UNITED STATES ATTORNEY, SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREWS PLAZA

NEW YORK, N.Y. 10007

OF COUNSEL: WILLIAM J. KELLERHER, JR.

Sworn to before me on DECEMBER 20, 1977

*Don B. Panzer*Notary Public
New YorkNOTARY PUBLIC
NO. 42 00000003
QUALIFICATION EXPIRES MARCH 30, 1979*Nancy J. Rose*

(Print signer's name below signature)

Nancy J. Rose

STIPULATION ADDING RESPONDENT-APPELLANT'S
ORDER TO SHOW CAUSE WITH STAY (UNSIGNED)
AND SUPPORTING DOCUMENTS TO THE RECORD ON
APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA and
CHARLES E. JORDAN, JR., Revenue
Agent, Internal Revenue Service,

Petitioners,

Index No. M-18-304 (IBC)

-against-

STIPULATION

WILLIAM J. WERNER,

Respondent.
-----X

IT IS HEREBY STIPULATED AND AGREED by and between the
attorneys for the parties:

That the unsigned Order to Show Cause With Stay, brought on
by Bandler & Kass, Esqs., attorneys for Respondent, William J. Werner,
the affidavit of Richard L. Gold, sworn to the 21st day of December,
1977, along with the Exhibits annexed thereto, and Respondent's
Memorandum in Support of His Motion for Rule 60(b) Relief, be and the
same hereby are included in the Record on Appeal in this case; and

That the same may be indexed and transmitted to United States
Court of Appeals for the Second Circuit along with the other portions of
the Record on Appeal for docketing in this case.

Dated: New York, N. Y.
January 5, 1978

BANDLER & KASS

BY: Richard Hill

(An Associate of the Firm
Attorneys for Respondent
William J. Werner

ROBERT B. FISKE, JR.

United States Attorney for the
Southern District of New York
and Attorney for Petitioners

BY: Peter R. Paden

PETER R. PADEN

Assistant United States Attorney

NOTICE OF APPEAL
WITH AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA AND
CHARLES E. JORDAN, JR., REVENUE AGENT,
INTERNAL REVENUE SERVICE,

M-18-304 (IBC)

PETITIONERS,

NOTICE OF APPEAL

-against-

WILLIAM J. WERNER,

RESPONDENT.

S I R S :

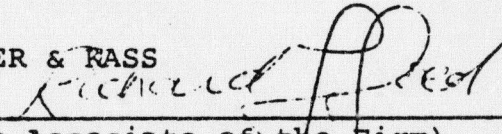
PLEASE TAKE NOTICE that the Respondent, William J. Werner, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order of Judge Irving Ben Cooper of the United States District Court for the Southern District of New York, dated November 17, 1977, filed on November 18, 1977 and ordering the Respondent, William J. Werner, to comply fully with a summons issued by the Internal Revenue Service, and from each and every part of that Memorandum and Order.

Yours, etc.

Dated: New York, N. Y.
December 20, 1977

To: Robert B. Fiske, Jr.
United States Attorney
Southern District of
New York
One St. Andrews Plaza
New York, N.Y. 10007
(Of Counsel:
William J. Kellerher, Jr.)

BANDLER & RASS

By: 
(An Associate of the Firm)
Attorneys for Respondent
William J. Werner
Office & P. O. Address
605 Third Ave.
New York, N.Y. 10016
(212) 972-1100

Notice of Appeal with Affidavit of
Service.

A-68

STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

and reside at **NANCY J. ROSE**
NEW YORK, N.Y.

being sworn says: I am not a party to the action, am over 18 years of

On **December 20**, 1977, I served a true copy of the annexed **NOTICE OF APPEAL**
in the following manner:



Service
By Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service
within the State of New York, addressed to the last known address of the addressee(s) as indicated below:



Personal
Service

by delivering the same personally to the persons and at the addresses indicated below:

ROBERT B. FISKE, JR., UNITED STATES ATTORNEY, SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREWS PLAZA
NEW YORK, N.Y. 10007
OF COUNSEL: WILLIAM J. KELLERHER, JR.

sworn to before me on **DECEMBER 20**, 1977

H DON B. PANUSH

NANCY J. ROSE

(Print signer's name below signature)

1 Copies Received
Date January 2, 1978
Firm Robert B. Fiske, Jr.
U.S. Attorney - Southern District of N.Y.
By _____

ROBERT B. FISKE JR.

